

June 8, 2005

William R. Turner, Treasurer
Turner, Laub & Escovar, CPA
888 South Figueroa, Suite 860
Los Angeles, CA 90017

Re: Your Request for Advice
Our File No. A-05-020

Dear Mr. Turner:

This letter is in response to your request on behalf of the Simon for Treasurer Committee for advice regarding the campaign provisions of the Political Reform Act (the “Act”).¹

QUESTION

May the Simon for Treasurer Committee (the “Committee”) employ Visteva Corporation (“Visteva”) to receive contributions through a website and transmit those contributions to the Committee semi-monthly?

CONCLUSION

The Committee may employ Visteva to receive contributions through a website and transmit the contributions to the Committee. However, the contributions must be deposited in the Committee’s account promptly. Semi-monthly deposits would be considered to be promptly deposited.

FACTS

The Simon for Treasurer Committee has contracted with Visteva Corporation to produce a website for communication and fundraising purposes. The making of contributions to the Committee via credit card will be available through the website. One of the services offered by Visteva would include direct deposit of the website credit card contributions into a bank account of Visteva’s. Funds accumulated in such a manner

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

would be transmitted semi-monthly to the Committee for deposit into its bank account. The Committee would receive instantaneous notification of all such Internet credit card contributions, including all necessary information required to meet disclosure requirements, and has decided to limit these contributions to under \$1,000 each. In addition, you stated during a May 23, 2005, telephone call that Visteva will be retaining its fee before transferring the contributions to the campaign bank account per your contractual agreement.

ANALYSIS

Section 82015 of the Act defines “contribution” in part as follows:

“(a) ‘Contribution’ means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

“(b)(1) A payment made at the behest of a committee as defined in subdivision (a) of Section 82013 is a contribution to the committee unless full and adequate consideration is received from the committee for making the payment.

(2) A payment made at the behest of a candidate is a contribution to the candidate unless the criteria in either subparagraph (A) or (B) are satisfied:

(A) Full and adequate consideration is received from the candidate.

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office....”

The Act requires disclosure and recordkeeping with respect to contributions and it prescribes the manner in which contributions of \$100 or more may be made. (Section 84200 et seq.; section 84101; and section 84300(c).) Under the relevant provisions of the Act, candidates and committees may raise contributions over the Internet, as long as the Act’s disclosure and recordkeeping requirements are met. (Section 84300; *McAndrews* Advice Letter, No. A-03-197; *Bergeron* Advice Letter, No. I-00-089.) Applying these principles, the Committee may use the Internet as the “collection agent” where contributors use their credit cards as the means of payment, provided that the procedure complies with the disclosure provisions of the Act, as described below.

Disclosure

The Act requires committees to file periodic reports disclosing contributions received and expenditures made for the purpose of supporting or opposing state and local candidates and ballot measures. Section 84211 requires that for each person who contributes a cumulative amount of \$100 or more, a committee must disclose the following information:

1. The date of the contribution;
2. The name and address of the contributor;
3. If the contributor is an individual, the name of his or her employer or, if self-employed, the name of his or her business.
4. If the contributor is a committee, the identification number assigned to the committee by the Secretary of State.
5. The amount received from the contributor during the period covered by the report; and
6. The cumulative amount received from the contributor since January 1 of the current calendar year.

In addition, section 84211(d) requires committees to disclose the total amount of contributions received from persons who have given a cumulative amount of less than \$100 and section 84306 requires that:

“All contributions received by a person acting as an agent of a candidate shall be reported promptly to the candidate or any of his or her designated agents. All contributions received by a person acting as an agent of a committee shall be reported promptly to the committee’s treasurer or any of his or her designated agents. ‘Promptly’ as used in this section means not later than the closing date of any campaign statement the committee or candidate for whom the contribution is intended is required to file.”

You indicate that Visteva will send the Committee all of the required information regarding each contributor who gives on-line through the website by “instantaneous notification” in compliance with these provisions.

Recordkeeping Requirements

In addition, in order to be able to comply with the above rules, the Act also imposes recordkeeping requirements. Section 84104 of the Act states:

“It shall be the duty of each candidate, treasurer, and elected officer to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to otherwise comply with the provisions of this chapter.

The detailed accounts, records, bills and receipts shall be retained by the filer for a period specified by the commission....”

Regulation 18401 (copy enclosed), which sets forth the records that committees must maintain for contributions, was amended in August 2004, and now specifies what records committees must maintain for electronic contributions.

Contributions under \$25

Candidates, treasurers and elected officers must keep a list of the dates and daily totals of contributions received under \$25. The original source documentation for these contributions consists of bank statements, check registers, bank or passbooks, and any other records reflecting a continuous computation of campaign account balances. (Regulation 18401(a)(1).)

Contributions of \$25 or more but less than \$100

In addition to the daily totals required for contributions under \$25, for contributions of \$25 or more but less than \$100, candidates, treasurers and elected officers must keep records of the date of each contribution, the amount, and the full name and street address of the contributor. The records must also contain the cumulative amount received from the contributor and specify whether the contribution is monetary or non monetary. If received by an intermediary, disclosure of the full name and street address, occupation and employer of the intermediary and the true source of the contribution is required.

The original source documentation for these contributions includes bank statements, check registers and passbooks, discussed above, and copies of contributor’s checks, cashier’s checks, money orders, wire transfers, deposits or duplicate deposit slips, and any other documents reflecting each item deposited and each deposit made to a campaign bank account. Source documentation includes contributor cards, letters of transmittal and notices received from contributors. For electronic contributions, original source documentation includes “all credit card receipts, transaction slips or other writings signed by the contributor, credit card vouchers, and other documentation of credit card transactions, including credit card confirmation numbers and itemized transaction reports, as well as any other information collected when debiting the contributor’s account.” (Regulation 18401(a)(2)(B).) If made through the Internet, also include a record of the transaction created and transmitted by the cardholder including the name of the cardholder, the cardholder’s address and the card number. (Regulation 18401(a)(2).)

Contributions of \$100 or more

For these contributions, candidates, treasurers and elected officers must maintain all the information required for contributions above \$25, but less than \$100, and in addition, must include the occupation and employer of any contributor (or if the

contributor is self-employed, the name of the principal place of business of the contributor).

The original source documentation shall consist of all items listed above for smaller contributions, and in addition, all communications sent by the committee to obtain the occupation and employer information. (Regulation 18401(a)(3).)

Credit card transactions

For credit card transactions, the entire amount charged to each contributor's credit card is the amount of the contribution. The Committee should not subtract any fees retained or charged by the credit card company. The service fee charged or retained by Visteva is considered an expenditure of the Committee's. Therefore, any amounts charged or withheld by Visteva must be reported by the Committee as expenditures at the time the fees are deducted or charged. (*Nguyen-Tan* Advice Letter, No. A-00-168.)

For reporting purposes, the date the contribution is received is:

“The date that the candidate or committee, or the agent of the candidate or committee, obtains possession or control of the goods or services, or the date that the candidate or committee otherwise receives the benefit of the expenditure.” (Regulation 18421.1(f), copy enclosed.)

Therefore, the date that *Visteva*, the Committee's agent, “obtains possession or control” of the payment information or the funds, whichever is earlier, is the date that the *Committee* receives the contribution. In addition, the Committee must ensure that all of the requirements of the Act are met, including the requisite information on each contributor and the date of the contribution, collected in a timely fashion either by tracking the information on the Committee's website, or by ensuring that *Visteva* forwards the information to the Committee promptly. (Section 84306; *Nguyen-Tan, supra.*)²

Section 85201

Section 85201 establishes that a candidate's campaign funds must be held in one account established at a financial institution located in the state.

“(a) Upon the filing of the statement of intention pursuant to Section 85200, the individual shall establish one campaign contribution account at an office of a financial

² Because of a change in regulation 18421.1, the advice provided in *Bergeron* Advice Letter, No. I-00-089 and *Nguyen-Tan* Advice Letter, No. A-00-168 was rescinded to the extent that it was determined that the electronic collection agent (i.e., the company running the Internet site that collects the contributions) was an intermediary in the transaction.

institution located in the state.

“(b) As required by subdivision (f) of Section 84102, a candidate who raises contributions of one thousand dollars (\$1,000) or more in a calendar year shall set forth the name and address of the financial institution where the candidate has established a campaign contribution account and the account number on the committee statement of organization filed pursuant to Sections 84101 and 84103.

“(c) All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate’s controlled committee shall be deposited in the account.

“(d) Any personal funds which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure.

“(e) All campaign expenditures shall be made from the account.” (Section 85201.)

In regulation 18524, the Commission has recognized narrow exceptions and said that candidates may place campaign funds into interest-bearing accounts, create petty cash funds and establish one or more credit card accounts for expenses. Prior to expenditure, the funds shall be redeposited in the candidate’s campaign bank account. In this case, you ask if the money can be routinely collected by Visteva and then transferred semi-monthly into the Committee’s campaign bank account.

You stated that Visteva will be collecting its fees from the contributions before they are deposited into the campaign bank account per your contractual agreement. Through a great deal of previous advice, Commission staff has identified that collection agents, banks and credit card companies, as a practice, retain their fees from the incoming contributions and then transfer the remainder to the campaign bank account. (See for example: *Buck-Walsh* Advice Letter, No. I-90-239 (tele-network); *Nguyen-Tan, supra* (PayPal); *McAndrews, supra* (2003 summary of current advice reaffirming this practice).) This appears to be the regular business practice when acting as a collection agent and is the business’s full and adequate return on services rendered.

This reasoning has also been applied in the Commission’s opinion to the California Republican Party (“CRP”) in 1999 where affinity credit cards were at issue. In that opinion and the accompanying memorandum, the Commission reasoned that since the CRP had negotiated the deal through a contractual transaction with full and adequate consideration on both sides, affinity credit cards were not contributions and were an allowable practice. Although not highlighted in the opinion, this analysis is based on a situation where the affinity credit card company withholds any costs before transferring the money made when supporters of the CRP sign-up or use a special CRP credit card.

(*In re California Republican Party* (1999) 13 FPPC Ops. 1.) Therefore, since your proposed method of collecting contributions is also a contractual transaction with full and adequate consideration provided on both sides, it is a permissible method of collecting contributions and paying for the services interrelated with that collection.

In addition, as discussed above, section 84306 requires that the agent of the candidate or committee promptly notify the candidate of a contribution. A candidate “receives” the contribution under regulation 18421.1 when Visteva “obtains possession or has control of the debit/credit account information...or...the funds.” However, this rationale has been applied only to situations where the funds were also transferred in a prompt manner and has not been extended to a withholding of funds by a collection agent for an extended period of time after the committee has “received” the contribution. (See *Buck-Walsh, supra* (collection agent forwards the contribution directly to the committee) and *Nguyen-Tan, supra* (contribution is automatically deposited into the campaign bank account by PayPal within “a few days after approval”).) Therefore, so long as the contributions are deposited promptly and routinely into the candidate’s campaign bank account, as is proposed here, this system of collecting contributions appears to comply with these requirements. In addition, you should note that as with an interest-bearing account, any interest made on the contributions will also be required to be deposited into the campaign bank account.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By:

Galena West
Counsel, Legal Division

Enclosures

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